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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2384 OF 1992

Sundarlal Lalchand)
C/o. K.S. Harjani of Bombay)
Indian Inhabitant, residing at)
3rd Pasta Lane, Colaba,)
Bombay - 400 005.) ... Petitioner

Vs.

1. Union of India

2. The Defence Estate Officer,)
Bombay Circle, Colaba,)
Bombay - 400 005.) ... Respondents

Mr. Y.T. John for the petitioner.

Mr. S.R. Rajguru with Mr. Y.R. Mishra for the respondents.

CORAM: SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED: 8TH DECEMBER 2005.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. In this petition, the petitioner has prayed that respondent 1 - Union of India and respondent 2 - the Defence Estate Officer, Bombay Circle, Colaba, Mumbai, be ordered forthwith to dehire the flat being Flat No.7 on the 2nd floor of Lalchand Mansion, 3rd Pasta Lane, Colaba, Mumbai (for convenience, "the said flat") and they may be ordered to hand over vacant possession thereof to the petitioner.

2. It appears that by order dated 23/11/1942, the then Garrison Engineer had hired the said flat for the purpose

of housing Government employees during the war. It was purchased by the petitioner under the conveyance deed dated 1/4/1959 from the owners of the said property being Mr. H. Tirandas Aresh and Mrs. Perin H. Aresh. The petitioner's case is that he has called upon the respondents to dehire the said flat on several occasions. However, the respondents have not dehired it till date. In the petition, the petitioner has set out the details of the efforts made by him to persuade the respondents to dehire the said flat. It appears that dehiring was also sought on compassionate grounds. However, the petitioner's request was not granted by the respondents. It is in these circumstances that this petition has been filed.

3. We have heard the learned counsel for the petitioner. He contended that the respondents are not strictly following the policy of dehiring of the flats and the flats which were hired by the respondents subsequent to the date on which the petitioner's flat was hired have already been dehired. According to the learned counsel, the respondents are not acting in a just, fair and reasonable manner and their action is violative of Article 14 of the Constitution of India. The petitioner has relied on the judgment of the Supreme Court in **H.D. Vora v. State of Maharashtra & Ors., AIR 1984 SC 866**.

4. On behalf of the respondents, two affidavits have been filed in reply to the petition by Mr. Ashwani

Kumar, Defence Estate Officer. The first affidavit is dated 16/12/2004. In this affidavit, it is stated that the dehiring of the flats is done strictly in accordance with the provisions laid down by the Government of India, Ministry of Defence. Two policy letters dated 21/7/1978 and 14/4/1980 are annexed to this affidavit. It is further stated that the essence of dehiring policy is that the seniority list of houses held on hire be properly maintained and be carefully followed to avoid any allegation of malpractices. The following principles underlying the policy have been detailed in the said affidavit.

"a) Dehiring of houses held on hire will be strictly in accordance with the seniority list".

b) All requests for dehiring will be referred to the Government for decision.

c) Further, paragraph 2 of the Government of India, Ministry of Defence letter of 14/4/1980 lays down that all requests for premature dehiring on compassionate grounds will be considered for approval by the Government of India, Ministry of Defence."

5. In his affidavit dated 8/12/2005, Mr. Ashwani Kumar has stated that premature dehiring of some of the flats mentioned in the list exhibited at Ex-1 was done under the provisions of paragraph 2 of the policy letter dated 14/4/1980, which is annexed as Ex-2 to the said affidavit. It is further stated that some of the flats mentioned in the said list were dehired as per the orders of this court and as per the orders of the Supreme Court.

6. We have also heard the learned counsel for the respondents. He has reiterated the stand taken by the respondents in the affidavits of Mr. Ashwani Kumar.

7. We have gone through the policy of the Government of India as reflected in the annexures to the affidavits of Mr. Ashwani Kumar. Clauses (i) and (ii) of Ex-2, which is a copy of the policy letter dated 14/4/1980 read as under:

> "(i) The number of houses to be dehired will be 10% of additional accommodation that becomes available at the station. Every year, the number of houses to be dehired on this basis will be fixed by Naval Headquarters in consultation with the Ministry of Defence.

(ii) Dehiring will be done by adopting the simple formula that the houses taken on hire earliest will be dehired first unless there are compelling and extreme compassionate grounds."

8. Paragraph 2 of the said policy letter reads as under:

"2. All dehiring under these instructions will be made with the prior approval of Ministry of Defence to whom Naval Headquarters will submit relevant lists and proposal at the appropriate time for dehiring of house on the basis of date of hiring. Compassionate cases of compelling nature cases of extreme hardship will be considered on merits of case and decided by the Ministry of Defence in consultation with Naval Headquarters. All such cases of dehiring of houses will be decided by the Ministry of Defence with the approval of the Defence Minister."

9. The petitioner had made an application on 30/9/1986 requesting that the said flat may be dehired. In that application, he had pleaded compassionate ground. Reply to that application was sent by the respondents on 5/1/1987 stating that there is acute shortage of accommodation and, hence, the request of dehiring cannot

be granted on compassionate ground. The petitioner was further informed that the flat of the petitioner stands at serial no.192 on the list of flats held on hire and the request of the petitioner will be considered as and when the accommodation situation improves at the station. Till date, the respondents have not considered the request of the petitioner on dehiring of the flat. We prima facie feel that in a given case, compassionate ground may be so acute that it may override the fact that accommodation situation at the station is such that dehiring is not possible. These, however, being policy matters, we do not wish to express any final opinion on this aspect. But, we do feel that the respondents ought to have atleast given due consideration to the compassionate ground pleaded by the petitioner. Such consideration is totally absent in the letter dated 5/1/1987.

10. It appears that the petitioner had filed a petition in this court being Writ Petition No.1999 of 1990 making the same grievance. However, according to the petitioner, a statement was made in this court that his flat will be given back to him as soon as possible and, therefore, the petitioner withdrew the petition. Thereafter, the petitioner had written several letters to the respondents but the respondents have not dehired the said flat.

11. We find substance in the serious grievance made by

the learned counsel for the petitioner that the respondents are not following the policy in true spirit. We have seen Ex-1 to the affidavit of Mr. Ashwani Kumar. We find that Flat Nos.5 to 14 were hired after the petitioner's flat was hired. Yet, they have been dehired before the petitioner's request for dehiring of the said flat was considered. We find that seven flats situated in one building viz. "Rakhi Mahal" have been dehired on 7/10/2005. We expect the respondents to treat all citizens equally and follow the policy in true spirit. Because we do not want to interfere with the policy matters, we refrain from calling upon the respondents to produce the records in this court. But, in the circumstances of the case, we feel that the respondents should consider the petitioner's request afresh and at the earliest. His request for dehiring of the said flat on compassionate ground needs to be considered. The learned counsel for the petitioner submitted that on account of passage of time, there are certain new developments and the petitioner would like to submit further materials to the respondents in support of his compassionate ground. We feel that the petitioner should be allowed to do so. Hence, the following order:

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12. The petitioner shall make a fresh application for dehiring of the said flat to the Defence Minister, Union of India, with a copy endorsed to Mr. Ashwani Kumar,

Defence Estate Officer, Colaba, Mumbai, setting out all details along with additional materials in support of his application. In the said application, the petitioner may request that the said flat may be dehired on compassionate ground. If such an application is made by the petitioner, the same will be considered by the respondents within a period of eight weeks from the date of receipt of the same. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(ABHAY S. OKA, J.)